

D.T.E. 98-9

Investigation by the Department of Telecommunications and Energy on its own motion into establishing intraLATA presubscription requirements for non-Bell Operating Company local exchange carriers and local exchange resellers, pursuant to § 251(b)(3) of the Telecommunications Act of 1996.

---

APPEARANCES: Maureen A. Swift

400 West Avenue

Rochester, New York 14611

FOR: ACC NATIONAL TELECOM CORP.

Intervenor

Jeffrey F. Jones, Esq.

Jay E. Gruber, Esq.

Palmer & Dodge LLP

One Beacon Street

Boston, MA 02108

- and -

Melinda Milberg, Esq.

32 Avenue of the Americas, Room 2700

New York, New York 10013

FOR: AT&T COMMUNICATIONS OF

NEW ENGLAND, INC.

Intervenor

Barbara Anne Sousa, Esq.

185 Franklin Street, Room 1403

Boston, MA 02110-1585

FOR: NEW ENGLAND TELEPHONE AND

TELEGRAPH COMPANY D/B/A

BELL ATLANTIC - MASSACHUSETTS

Intervenor

Eric J. Krathwohl, Esq.

Rich, May, Bilodeau & Flaherty, P.C.

294 Washington Street

Boston, MA 02108-4675

- and -

Jordan Michael, Esq.

360 Second Avenue

Waltham, MA 02154

FOR: CTC COMMUNICATIONS

Intervenor

Alan D. Mandl, Esq.

Ottenberg, Dunkless, Mandl & Mandl

260 Franklin Street

Boston, MA 02110

-and-

Hope H. Barbulescu, Esq.

5 International Drive

Rye Brook, New York 10573

FOR: MCI TELECOMMUNICATIONS CORP.

Intervenor

Robert J. Munnelly, Jr., Esq.

100 Grandview Road, Suite 201

Braintree, MA 02184

FOR: NEW ENGLAND CABLE TELEVISION

ASSOCIATION, INC.

Intervenor

Russell M. Blau, Esq.

Morton J. Posner, Esq.

Swidler & Berlin, Chartered

3000 K Street, N.W.

Washington, D.C. 20007-5116

FOR: RCN TELECOM SERVICES, INC.

Intervenor

Cathy Thurston, Esq.

1850 M Street, N.W., Suite 1110

Washington, D.C. 20036

FOR: SPRINT COMMUNICATIONS COMPANY L.P.

Intervenor

Irene Waldorf

Industry Affairs Manager

Taconic Telephone Corp.

One Taconic Place

Chatham, New York 12037-9784

FOR: TACONIC TELEPHONE CORP.

Intervenor

Eric J. Krathwohl, Esq.

Rich, May, Bilodeau & Flaherty, P.C.

294 Washington Street

Boston, MA 02108-4675

-and-

Andrew O. Isar

Director - Industry Relations

4312 92<sup>nd</sup> Avenue, N.W.

Gig Harbor, WA 98335

FOR: TELECOMMUNICATIONS RESELLERS

ASSOCIATION

Intervenor

Andrew D. Lipman, Esq.

Morton J. Posner, Esq.

Swidler Berlin Shereff Friedman, LLP

3000 K Street, N.W., Suite 300

Washington, D.C. 20007-5116

FOR: WORLDCOM TECHNOLOGIES, INC.

Intervenor

I. INTRODUCTION

On February 17, 1998, the Department of Telecommunications and Energy ("Department") on its own motion opened an investigation pursuant to

§ 251(b)(3) of the Telecommunications Act of 1996 ("Act"),<sup>(1)</sup> to establish dialing parity requirements for calls originating and terminating within a local access and transport area ("intraLATA") for certain incumbent local exchange carriers ("ILECs"),<sup>(2)</sup> facilities-based competitive local exchange carriers ("CLECs") and non-facilities-based local exchange resellers. With toll dialing parity (also referred to as intraLATA presubscription ("ILP")), telephone customers can preselect a provider of intraLATA toll service and have their calls routed automatically to that service provider without having to dial extra digits. The proceeding was docketed as D.T.E. 98-9.

On August 8, 1996, the Federal Communications Commission ("FCC") adopted and released an Order which, in part, directed all local exchange carriers ("LECs"), including Bell Operating Companies ("BOCs") such as Bell Atlantic, to implement toll dialing parity by February 8, 1999. See In re Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392, at ¶ 62 (1996) ("Second Report and Order"). However, on August 22, 1997, the U.S. Court of Appeals for the Eighth Circuit ("Court") vacated the FCC's intrastate toll dialing parity rules contained in the Second Report and Order, concluding that the FCC exceeded the scope of its jurisdiction in promulgating rules that govern intrastate dialing, which the Court found lies within the states' jurisdiction. People of the State of California v. FCC, 124 F. 3d 934, 943 (8th Cir. 1997). The Court's decision gave state commissions exclusive jurisdiction over the implementation of intrastate dialing parity. On January 25, 1999, the United States Supreme Court overturned several holdings in the Eighth Circuit's decision, including the issue of whether the FCC had authority to prescribe rules for intrastate dialing parity, thereby reinstating the FCC's dialing parity rules. AT&T Corp. v. Iowa Utilities Board, Nos. 97-826 et al., slip op. at 17 (S.Ct. January 25, 1999).

On March 23, 1999, the FCC issued an Order establishing new deadlines by which LECs must implement intrastate dialing parity. See In re Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 99-54 (1999) ("Dialing Parity Order"). Local exchange carriers that have state-approved dialing parity plans must implement dialing parity no later than May 7, 1999. Dialing Parity Order at ¶ 7. Local exchange carriers that have not yet filed dialing parity plans with a state commission must do so by April 22, 1999. Id. States have until June 22, 1999 to review and approve such plans, and upon receiving that state approval, carriers have 30 days within which to implement dialing parity. Id. Local exchange carriers whose plans

have not been approved by a state commission by June 22, 1999, must file the plan with the FCC no later than that date, and must implement dialing parity within 30 days of FCC approval. Id.

A public hearing and a procedural conference were held on March 13, 1998, at the Department's offices. Intervention was granted to ACC National Telecom Corp., AT&T Communications of New England, Inc. ("AT&T"), Bell Atlantic, CTC Communications Corp. ("CTC"), MCI Telecommunications Corporation ("MCI")<sup>(3)</sup>, New England Cable Television Association, Inc. ("NECTA"), RCN Telecom Services, Inc. ("RCN"), Sprint Communications Company L.P. ("Sprint"), Taconic, the Telecommunications Resellers Association, and WorldCom Technologies, Inc. ("WorldCom"). On March 16, 1998, the Department issued a set of Briefing Questions seeking comment on dialing parity requirements for non-BOC LECs.<sup>(4)</sup> The record consists of initial and reply comments from the parties on the Department's Briefing Questions. Although given the opportunity, no party requested an evidentiary hearing. In this Order, the Department establishes ILP requirements for non-BOC LECs in Massachusetts.

## II. STANDARD OF REVIEW

In the FCC's Second Report and Order, the FCC promulgated rules implementing the toll dialing parity requirements of the Act, which apply to all LECs. The Second Report and Order required all LECs to "implement intraLATA and interLATA toll dialing parity, using the 'full 2-PIC'<sup>(5)</sup> presubscription method." <sup>(6)</sup> Second Report and Order at ¶5. In addition, the FCC directed "each LEC to submit to the state regulatory commission for each state in which it provides telephone exchange service the LEC's plan for implementing toll dialing parity. That plan must contain detailed implementation information." Id. at ¶38. This plan must include:

(1) a proposal that explains how the LEC will offer intraLATA toll dialing parity for each exchange that the LEC operates in the state, in accordance with the provisions of this section, and a proposed time schedule for implementation; and (2) a proposal for timely notification of its subscribers and the methods it proposes to use to enable subscribers to affirmatively select an intraLATA toll service provider. Id.

The FCC also required that all telecommunications carriers remain subject to carrier verification procedures set forth in § 258 of the Act and Part 64 of the FCC's rules, "as well as any verification or 'anti-slamming' procedures that the FCC may adopt to prevent unauthorized changes in a customer's selection of a provider of telephone exchange or telephone toll service." 47 U.S.C. § 258(a); 47 C.F.R. § 64.1100.

The FCC permitted the LECs to recover the incremental costs related to the provision of dialing parity from all providers of telephone exchange service and telephone toll service in the area served by the LEC on a competitively neutral basis. Second Report and Order at ¶95.

### III. ISSUES, ANALYSIS AND FINDINGS

- Should the Department Apply Bell Atlantic's ILP Requirements to Other Local Exchange Carriers?
- 

In NYNEX ILP, D.P.U. 96-106, and Bell Atlantic-Massachusetts, D.P.U./D.T.E. 96-106-A, the Department made findings with respect to Bell Atlantic's plan for implementing intraLATA toll dialing parity in Massachusetts that encompassed a broad range of ILP-related issues such as carrier selection procedures for customers, customer notification requirements, and PIC freezes. In this proceeding, the Department must decide whether to apply those same ILP requirements to non-BOC LECs, or to adopt different ILP requirements and implementation methods.

#### 1. Positions of the Parties

##### a. Bell Atlantic

Bell Atlantic argues that fairness is essential in a competitive environment and that in order to maintain a level playing field, it is necessary for the Department to adopt common ILP requirements for all carriers (Bell Atlantic Comments at 2 ).

##### b. Other Parties

AT&T, CTC, NECTA, Sprint, and WorldCom/RCN<sup>(7)</sup> argue that the Department should not apply the same ILP standards to non-BOC LECs. These parties argue that because Bell Atlantic is the dominant provider of local telephone service, toll competition would suffer if the Department imposed Bell Atlantic's ILP requirements on non-BOC LECs that have only a small share of the local telephone service market (AT&T Comments at 1-2; NECTA Comments at 3; Sprint Comments at 2; WorldCom/RCN Comments at 1; CTC Reply Comments at 2).

#### 2. Analysis and Findings

The Department adopted detailed, rigorous ILP requirements for Bell Atlantic in order to ensure that Bell Atlantic did not use its monopoly position and existing relationship with its customers unfairly to its advantage in the intraLATA toll market. We conclude that those same concerns do not exist with non-BOC LECs, who, as non-dominant carriers, lack market power at this time. While Bell Atlantic's arguments have a superficial appeal (e.g., applying the same standards to all LECs would be administratively easier for the

Department), the Department continues to regulate the telecommunications industry according to a dominant/non-dominant carrier framework in which tighter regulation is applied to dominant carriers, such as Bell Atlantic.<sup>(8)</sup> Thus, in general, we will not impose the same ILP requirements on non-BOC LECs as we have on Bell Atlantic (but see below for a discussion of specific instances where similar treatment is appropriate). The non-Bell Atlantic ILECs (Granby, Richmond, Sentinel, and Taconic), who are dominant carriers in their respective small, geographic service territories, maintain market power over the local exchange in those service territories, but they do not offer toll services. Therefore, there is no reason to impose any toll market protection requirements on these carriers.

## B. What ILP Method Should the Department Apply to Non-BOC LECs?

As part of Bell Atlantic's ILP plan, the Department adopted a full 2-PIC presubscription method whereby customers must have the option to preselect different carriers for both their intra- and interLATA toll calls.

### 1. Positions of the Parties

#### a. Bell Atlantic

Bell Atlantic argues that there is no basis for allowing non-BOC LECs to adopt anything less than the full 2-PIC method (Bell Atlantic Reply Comments at 3). While Bell Atlantic states that it has no objection to a LEC opting for the multi- or smart-PIC method,<sup>(9)</sup> Bell Atlantic opposes NECTA's proposal to allow non-BOC LECs to use 1-PIC (*id.* at 3-4).

#### b. Other Parties

Sprint and AT&T agree with Bell Atlantic that the Department should require non-BOC carriers to implement the full 2-PIC method (AT&T Comments at 2; Sprint Comments at 3). NECTA contends that the Department should permit some carriers to offer 1-PIC if the technology prevents that carrier from implementing the 2-PIC method (NECTA Comments at 5).

### 2. Analysis and Findings

The FCC has adopted the full 2-PIC method as the minimum presubscription standard. Therefore, consistent with the FCC's ruling in its Second Report and Order, we find that all LECs must implement, at a minimum, the full 2-PIC selection method. See Second Report and Order at ¶ 50.

## C. How Should ILP Plans Distinguish between Local and Toll Calls?

For purposes of Bell Atlantic's ILP plan, Bell Atlantic relied on its existing definitions for local and toll calling to determine the intraLATA toll calling area. NYNEX ILP, D.P.U.



96-106 at 13. The Department must determine in this proceeding whether to require non-BOC LECs to define their local calling areas to match Bell Atlantic's local calling area.

## 1. Positions of the Parties

### a. Bell Atlantic

Bell Atlantic argues that the definition of "home and contiguous exchanges" used in D.P.U. 89-300 should also be the basis for determining the area within which ILP is available for all non-BOC LECs in this proceeding (Bell Atlantic Reply Comments at 4). Bell Atlantic contends that for purposes of ILP, it is essential that the Department use the same definition for "local" and "toll" calls for all carriers (Bell Atlantic Comments at 3). Bell Atlantic asserts that this uniformity will promote customer understanding and will ease the Department's administration of ILP (id.).

### b. Other Parties

The other parties disagree with Bell Atlantic's position and argue that consumers will be better served by allowing the non-BOC LECs to establish their own calling areas (NECTA Comments at 6; Sprint Comments at 3; CTC Reply Comments at 5). The non-BOC LEC calling areas may be larger than Bell Atlantic's local calling areas, thereby giving consumers more options and creating greater competition to Bell Atlantic (id.).

## 2. Analysis and Findings

We agree with the non-BOC LECs and reaffirm our previous finding that "neither federal law nor any order of the Department requires uniform calling areas for all LECs." See NYNEX ILP, D.P.U. 96-106, at 13. In a competitive market, different carriers should be allowed to have different definitions of the geographic area in which calls are defined as local. If non-BOC LECs were required to adopt the same local calling areas as Bell Atlantic, a consumer would be denied the option of selecting a telephone service provider whose local calling areas more closely met the consumer's calling needs.

### D. When Should Non-BOC LECs Implement Dialing Parity?

The debate among the carriers about the timing for non-BOC dialing parity became academic after the FCC announced new ILP deadlines, summarized above, applicable to all LECs. See Dialing Parity Order at ¶ 7. Thus, we no longer need to address this issue here.

### E. Which Calls Are Eligible or Ineligible for ILP?

There may be certain types of intraLATA toll calls that, due to technical or operational limitations, would continue to be carried by the LEC for completion, rather than be routed automatically to the toll carrier the customer selected. In NYNEX ILP, D.P.U. 96-106 at 14, Bell Atlantic identified certain types of toll calls, such as all intraLATA calls

to directory assistance dialed without a carrier access code and certain operator-type calls, that would continue to be carried by Bell Atlantic.

## 1. Positions of the Parties

### a. Bell Atlantic

Bell Atlantic argues that non-BOC LECs should be required to use Bell Atlantic's classification of eligible and ineligible ILP calls, as set forth in NYNEX ILP, D.P.U. 96-106 (Bell Atlantic Reply Comments at 5). Bell Atlantic contends that if a carrier claims that it is technologically precluded from treating a particular type of call as "eligible," that carrier must provide the Department with corroborating documentation along with the projected time for eliminating the technical impediment (id.).

### b. Other Parties

AT&T, Sprint and NECTA agree that eligible and ineligible calls for non-BOC LECs should be the same as those identified in Bell Atlantic's ILP plan, and that a non-BOC LEC should also be allowed to exclude additional types of calls as ineligible until that carrier deploys the necessary technology (AT&T Comments at 3-5; NECTA Comments at 11; Sprint Comments at 4). In addition, Sprint states that each non-BOC LEC's ILP plan should identify the types of calls the carrier would designate as ineligible due to technical or operational constraints (Sprint Comments at 5).

## 2. Analysis and Findings

We agree with the majority of the commenters that non-BOC LECs should be required to use Bell Atlantic's classification of eligible and ineligible calls, as identified in Bell Atlantic's ILP plan and approved by the Department in NYNEX ILP, D.P.U. 96-106, assuming the carrier has the same technical or operational limitations as Bell Atlantic. However, if a carrier is technologically unable to treat a particular type of call as eligible under its ILP implementation plan (because of, e.g., a unique network routing or special billing arrangement), the carrier must provide, in its plan, an explanation of the technical justification for excluding such calls and the projected time for eliminating the technical impediment. If no such limitations exist, the Department requires that these calls be made eligible for ILP. In addition, we also find that non-BOC LECs may designate other types of calls as ineligible for ILP treatment where they can demonstrate an operational impediment or constraint.

F. What Should Be the Effect of ILP on Optional Calling Plans? Optional calling plans (OCPs) offered by LECs to residential and business customers may include "bundled" local exchange service and regional toll calling.<sup>(10)</sup> These OCPs may be affected by the introduction of ILP. In NYNEX ILP, D.P.U. 96-106, at 20, the Department determined that Bell Atlantic must discuss the specifics of its customer's OCP and obtain the customer's permission before Bell Atlantic can remove the OCP from the customer's account.

## 1. Positions of the Parties

### a. Bell Atlantic

Bell Atlantic argues that non-BOC LECs should identify whether and to what extent the introduction of ILP may affect their OCPs and OCP subscribers, and that Bell Atlantic's OCP ILP obligations should be applied to all carriers (Bell Atlantic Comments at Exh. 1, exh. 1).

### b. Other Parties

AT&T, Sprint, and NECTA contend that, identical to the Department-imposed ILP requirement on Bell Atlantic, non-BOC LECs should be required to explain to their customers the effect of selecting an intraLATA toll carrier, other than the LEC, on that customer's OCP (AT&T Comments at 4; NECTA Comments at 11; Sprint Comments at 5). In addition, NECTA supports applying to the non-BOC LECs Bell Atlantic's ILP obligation to not automatically terminate the OCP if that customer selects an intraLATA toll carrier that is different from the customer's provider of bundled local and toll phone service (NECTA Comments at 11).

## 2. Analysis and Findings

As we stated previously in NYNEX ILP, consumers should have the flexibility to choose among different carriers. See NYNEX ILP, D.P.U. 96-106, at 19-20. With this increased choice comes greater responsibility for consumers to make informed decisions. Informed decision making requires that carriers provide adequate information to customers regarding the available choices. While toll carriers share in the responsibility of informing prospective customers of the differences between local, intra- and interLATA toll calls, LECs also bear the responsibility to discuss with their customers the specific benefits of their OCPs. Id. Therefore, we find that non-BOC LECs shall have the same obligations as Bell Atlantic to discuss the effect on OCPs when customers are considering the selection of an intraLATA toll service provider. Moreover, carriers may not remove an OCP without the customer's permission. A non-BOC LEC ILP implementation plan must explain how, if at all, intraLATA presubscription may affect its OCPs.

### G. To What Extent Must Non-BOC LECs Provide Customer Notification and Education?

In NYNEX ILP, D.P.U. 96-106 at 28, the Department required Bell Atlantic to distribute two ILP bill inserts to all of its existing customers at least 60 days and 30 days prior to Bell Atlantic's implementation of intraLATA dialing parity. Part of Bell Atlantic's customer education efforts included making available a toll-free telephone number for customer information regarding ILP and the availability of alternative toll carriers. Id. at

29-32. Bell Atlantic also was required to provide a separate group of ILP-knowledgeable representatives to whom callers could speak regarding ILP. These representatives are prohibited from marketing Bell Atlantic services. Id. at 31.

1. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that the Department should impose the same customer notification and education requirements on non-BOC LECs to ensure adequate notice to the other carriers' customers (Bell Atlantic Reply Comments at 6). In addition, Bell Atlantic argues that the other parties have not substantiated their claims that comparable customer notification would be both costly and an administrative burden (id.).

b. Other Parties

The majority of the parties argue that non-BOC LECs should not be required to follow the same customer education procedures as required of Bell Atlantic, contending that the non-BOC LECs lack market power, and that to impose identical notification and education requirements upon these carriers would result in unnecessary costs and burdens upon new entrants (AT&T Comments at 5; NECTA Comments at 12; Sprint Comments at 6-7; CTC Reply Comments at 2).

AT&T, CTC, NECTA, and WorldCom/RCN agree that non-BOC LECs' ILP plans should include some customer education efforts (AT&T Comments at 4-5; NECTA Comments at 11-12; WorldCom/RCN Comments at 2-4; CTC Reply Comments at 4). AT&T argues that non-BOC LECs should be given the discretion to determine their customer notification format because these carriers will have a small base, if any, of customers to notify regarding dialing parity (AT&T Comments at 5). AT&T and WorldCom/RCN suggest that non-BOC LECs could provide a list of ILP carriers and phone numbers at the customer's request, and AT&T argues further that these carriers should also be given the option to mail this material to the customer (AT&T Comments at 4; WorldCom/RCN Comments at 3).

CTC and WorldCom/RCN suggest a single bill enclosure 60 days prior to ILP implementation and that the use of the LECs' existing toll-free numbers and customer service representatives are adequate to respond to customer questions regarding choices of intraLATA toll providers (WorldCom/RCN Comments at 2-3; CTC Reply Comments at 4).

With respect to the marketing of services, AT&T, NECTA, and Sprint argue that unlike Bell Atlantic, non-BOC LECs do not hold market power in the intraLATA toll market and, therefore, non-BOC LECs should be allowed to use existing customer service personnel to market their services to customers who call with ILP questions (Sprint Comments at 7; AT&T Reply Comments at 3; NECTA Reply Comments at 7-8). WorldCom/RCN contend that to prevent customer service personnel from inappropriately

influencing a customer's decision regarding the selection of intraLATA toll carriers, non-BOC LECs could certify to the Department that they will adhere to non-discriminatory business practices in processing customer inquiries (WorldCom/RCN Comments at 4).

## 2. Analysis and Findings

The FCC directed each LEC to include in its plan for implementing toll-dialing parity a description of its customer notification procedures with respect to the timing and availability of ILP, and the procedures that will allow its subscribers to affirmatively select an intraLATA toll carrier. Second Report and Order at ¶ 6. In addition, the FCC left to the states decisions regarding consumer education and carrier selection procedures. Id. at ¶ 10.

While the Department agrees with the majority of the parties that non-BOC LECs should not be required to follow the same customer education procedures as those imposed on Bell Atlantic, we find that non-BOC LECs must provide their customers with a minimum level of customer education about ILP options. Non-BOC LECs shall provide ILP information to new customers at the time they subscribe to local exchange service, and to existing customers within 60 days of Department approval of their customer education materials. We give non-BOC LECs the discretion to determine the format of their customer education plans (e.g., bill insert, separate mailing, handout). At a minimum, the non-BOC LECs' customer education plans must explain the differences between local, intra- and interLATA toll calls and indicate that the customer may select a separate carrier for each.<sup>(11)</sup> Carriers are required to obtain prior Department review and approval of their customer education materials, and to describe their customer education plans in their proposed ILP plans to be submitted in compliance with this Order.

We find that non-BOC LECs must also maintain a current list of participating intraLATA toll service providers, including carrier telephone numbers, and must provide this list to customers, when requested. In addition, as part of their ILP plans, non-BOC LECs must indicate how they intend to inform intraLATA toll providers of the availability of ILP, and to describe the process by which toll providers will give the necessary information for interconnection with the LEC (e.g., Access Service Request).

The issue of marketing restrictions for non-BOC LECs will be addressed in the following section.

### H. What Carrier Selection Procedures Should be Applied to Non-BOC LECs?

Under Bell Atlantic's ILP plan, existing Bell Atlantic customers who do not affirmatively choose an intraLATA toll provider will continue, by default, to have Bell Atlantic as their intraLATA toll carrier. However, new Bell Atlantic local service customers who do not select an intraLATA carrier at the time of local service negotiation must dial a carrier

access code to route their intraLATA toll calls to the carrier of their choice until the customer makes a permanent, affirmative selection.

## 1. Positions of the Parties

### a. Bell Atlantic

Bell Atlantic argues that the carrier selection procedures the Department applies to Bell Atlantic should be imposed on non-BOC LECs because those procedures are designed to be competitively neutral and to promote competition in the intraLATA toll market (Bell Atlantic Reply Comments at 7).

### b. Other Parties

AT&T and Sprint argue that the procedures for carrier selection by new and existing customers should be the same for both Bell Atlantic and the non-BOC LECs (AT&T Comments at 5-6; Sprint Comments at 7). However, AT&T, NECTA, and Sprint contend that extensive restrictions on the marketing of toll services should not be imposed on non-BOC LECs because it would impede the development of both local and toll competition (AT&T Comments at 5; Sprint Comments at 7-8; NECTA Reply Comments at 9).

## 2. Analysis and Findings

For new customers, the FCC rules prohibit LECs from automatically assigning to themselves customers who do not affirmatively choose a toll provider. See Second Report and Order at ¶ 81. Therefore, we find that new, non-selecting customers will be required to dial a carrier access code for intraLATA toll calls. We find that existing non-BOC LEC customers who do not affirmatively choose a carrier may default to their current toll provider. Finally, because non-BOC LECs are considered non-dominant carriers with no market power, we find that they should not be subject to the same marketing restrictions as Bell Atlantic. Marketing restrictions are designed to prevent a carrier with market power in the local exchange from using that market power unfairly to its advantage in the more competitive toll market. Therefore, there is no reason to apply marketing restrictions to carriers with no market power in the local exchange. As part of their ILP plan, non-BOC LECs must describe the ILP procedures for new and existing customers, including the method and manner in which customers may affirmatively select their intraLATA toll service provider.

### I. Should Non-BOC LECs Provide an ILP PIC Freeze and How Should PIC Disputes be Resolved?

In NYNEX ILP, D.P.U. 96-106 at 40, the Department found that Bell Atlantic may offer, free of charge, an intraLATA "PIC freeze"<sup>(12)</sup> to its customers during the first 90 days of

ILP implementation. However, Bell Atlantic is unable to market or promote ILP PIC freezes actively and must comply with all relevant FCC rules with respect to PIC changes. Id.

With respect to ILP PIC disputes, the Department found that if Bell Atlantic is one of the carriers directly involved in the PIC change dispute, Bell Atlantic will investigate and attempt to resolve the dispute. Id. at 41. In cases where Bell Atlantic is not a party to the PIC dispute, the Department directed Bell Atlantic to provide available information to the appropriate carriers, upon request. Id.

## 1. Positions of the Parties

### a. Bell Atlantic

Bell Atlantic argues that a uniform approach to marketing PIC freezes is critical to minimize customer confusion and to promote carrier choice (Bell Atlantic Reply Comments at 8). Moreover, Bell Atlantic contends that the other carriers have not provided the Department with any justification for different treatment nor do those carriers explain how different marketing standards will promote intraLATA toll competition (id.). Accordingly, Bell Atlantic asserts that if the Department permits non-BOC LECs to market intraLATA PIC freezes actively to their customers, then the Department should permit Bell Atlantic to do the same (id.).

### b. Other Parties

Sprint argues that all carriers should operate under the same PIC freeze marketing restrictions (Sprint Comments at 8). AT&T, CTC, and NECTA argue that the Department should not place any marketing restrictions on the non-BOC LECs with respect to ILP PIC freezes (AT&T Comments at 6; NECTA Comments at 12-13; CTC Reply Comments at 3; NECTA Reply Comments at 9-10). According to these parties, the Department's marketing restrictions on Bell Atlantic are necessary because of Bell Atlantic's dominance over the local market; in contrast, non-BOC LECs have little or no market power (id.). Finally, CTC contends that, by definition, non-BOC LEC customers differ from Bell Atlantic customers in that the former have already exercised their right to choose an alternative carrier and are fully capable of choosing a different carrier should their current carrier fail to provide either the necessary level of service or competitive prices (CTC Reply Comments at 3). With respect to resolving PIC disputes, AT&T and NECTA argue that non-BOC LECs should be required to participate in PIC disputes when that carrier is a party to the dispute (AT&T Comments at 6; NECTA Comments at 13).

## 2. Analysis and Findings

The Department finds that the concerns that prompted placing restrictions on Bell Atlantic's ability to market actively ILP PIC freezes to its customers do not exist with non-BOC LECs. Because non-BOC LECs lack the market power to impede the

development of toll competition during ILP implementation, we do not place any marketing restrictions on non-BOC LECs with regard to ILP PIC freezes. However, in order to facilitate the resolution of PIC change disputes, the Department directs non-BOC LECs to participate in PIC disputes in which they are a party, just as we require Bell Atlantic to do.

J. Should Non-BOC LECs be Permitted to Levy a PIC Change Charge to Customers?

The Department approved Bell Atlantic's ILP plan allowing it to apply a \$5.00 ILP PIC change charge on those customers who change intraLATA carriers. Bell Atlantic-Massachusetts, D.P.U./D.T.E. 96-106-A at 22-23. In addition, the Department approved Bell Atlantic's proposal to impose a single \$5.00 charge when a customer makes both an intra- and interLATA PIC change at the same time, and to waive the \$5.00 charge for the first 90 days after ILP implementation. NYNEX ILP, D.P.U. 96-106 at 49-50.

1. Positions of the Parties

a. Bell Atlantic

Bell Atlantic states that the Department may apply Bell Atlantic's approved \$5.00 rate as the benchmark for the non-BOC LECs (Bell Atlantic Comments at 2). However, Bell Atlantic argues that if a carrier proposes a different rate, the Department should require the service provider to adequately justify the proposed charge (id. at 2-3).

b. Other Parties

Sprint argues that the Department should apply the same PIC conditions on non-BOC LECs as the Department has imposed on Bell Atlantic (Sprint Comments at 8). AT&T argues that non-BOC LECs should be permitted cost-based PIC change charges similar to Bell Atlantic (AT&T Comments at 6). WorldCom/RCN and NECTA argue that in the interests of reducing costs and for administrative convenience, the Department should permit non-BOC LECs to impose PIC-change charges at the same rate as Bell Atlantic (NECTA Comments at 13; WorldCom/RCN Comments at 5). However, NECTA and CTC argue further that non-BOC LECs should be expressly permitted to charge above or below Bell Atlantic's rates if the carrier can demonstrate that its costs are different (NECTA Comments at 13; CTC Reply Comments at 3). Both parties also argue that the 90-day waiver is not necessary or applicable for non-BOC LECs (id.). Finally, NECTA asserts that non-BOC LECs should be permitted to charge a customer \$5.00 for each PIC change, regardless of whether the customer is requesting the intra- and interLATA PIC change simultaneously (NECTA Reply Comments at 11).



## 2. Analysis and Finding

While the \$5.00 PIC change charge is based on Bell Atlantic's cost study, we find that other LECs may use this figure as a proxy. If cost-justified, any non-BOC LEC may charge more than \$5.00, if that carrier can demonstrate to the Department that its costs are higher. Of course, non-BOC LECs also can charge less than \$5.00 or nothing at all. We find that non-BOC LECs are not required to waive the applicable PIC change charge during the first 90 days of ILP implementation, since the customer inertia associated with changing a long-standing provider does not exist. However, we find that non-BOC LECs may only assess the customer a single PIC change charge for simultaneous intra- and inter-LATA PIC changes.

### K. Must PIC Verification Service Be Required of Non-BOC LECs?

As part of its ILP plan, Bell Atlantic offers a PIC verification service as an optional feature that allows ILP-participating toll carriers to verify their customers' ILP selection, and is intended to supplement the information that toll carriers currently receive from the daily activity reports provided to them by Bell Atlantic, free of charge. NYNEX ILP, D.P.U. 96-106 at 50-51. The Department approved Bell Atlantic's rate of \$1.35/per telephone line for each successful PIC verification made on a verbal basis, and \$0.60/per telephone line for each PIC verification made on an electronic interface basis. Id. at 51.

#### 1. Positions of the Parties

Bell Atlantic did not explicitly address this issue in its comments. AT&T contends that an optional PIC verification service is not applicable to non-BOC LECs and, therefore, the Department need not establish any such requirements in this proceeding (AT&T Comments at 6). NECTA argues that non-BOC LECs should be allowed to offer PIC verification as an optional service, but should not be required to do so (NECTA Comments at 13).

## 2. Analysis and Finding

Since non-BOC LECs have relatively few customers at this time, we find that it would be inappropriate and prohibitively expensive to require non-BOC LECs to establish PIC verification services. However, non-BOC LECs may offer this service as an option, if they so choose. Also, the Department may reconsider this issue in the future if changing market conditions so warrant.

### L. What ILP Requirements Should Be Imposed on Non-Facilities-Based Resellers?

#### 1. Positions of the Parties

Bell Atlantic did not explicitly address this issue. NECTA and Sprint argue that in order for all customers to enjoy the same benefits of ILP, resellers should be subject to the same ILP requirements as any other competing carrier (NECTA Comments at 14; Sprint

Comments at 9; NECTA Reply Comments at 12). AT&T generally argues that resellers should be required to follow Bell Atlantic's ILP plan more closely than CLECs because resellers are dependent on Bell Atlantic during the ILP process (AT&T Comments at 7).

## 2. Analysis and Finding

We agree with a majority of commenters that in order for all customers to enjoy the benefits of ILP, a non-facilities-based local exchange service reseller should be subject to the same requirements as facilities-based, non-BOC LECs. For the end-user, the reseller is the local service provider; therefore, resellers should be required to implement the procedures in this Order, with the cooperation of the underlying facilities-based LEC. Resellers will also be required to file ILP plans with tariffs for Department approval, in accordance with the deadlines imposed below.

### M. How Should Non-BOC-LECs Recover Their ILP Costs?

In NYNEX ILP, D.P.U. 96-106 at 58, the Department approved a cost recovery mechanism that allowed the cost of Bell Atlantic's ILP implementation to be shared proportionally by all toll carriers, including Bell Atlantic, by way of a monthly charge per presubscribed line to participating ILP toll providers.

#### 1. Positions of the Parties

Bell Atlantic argues that if a non-BOC LEC seeks recovery of its ILP implementation costs, the Department should require them to submit their cost recovery methodology using the same cost categories allowed for Bell Atlantic (Bell Atlantic Comments at 3). NECTA argues that non-BOC LECs should have the right to request that participating toll carriers be assessed a charge to recover the carrier's ILP-related implementation costs (NECTA Comments at 13-14). AT&T contends that each non-BOC LEC should be responsible for its own costs of implementing dialing parity, but should be allowed to petition the Department for cost recovery if the level of its expenses so warrant (AT&T Comments at 7).

#### 2. Analysis and Findings

We agree with AT&T. The costs for ILP implementation for non-BOC LECs should be minimal and, therefore, we expect that these carriers will be able to absorb these costs. However, given that the FCC permits LECs to recover the incremental costs related to the provision of dialing parity from all providers of toll services, including the LEC, on a competitively neutral basis, we find that if a non-BOC LEC incurs a disproportionately high level of expenses, that carrier has the right to petition the Department for cost recovery. See Second Report and Order at ¶ 95. However, the carrier will have to demonstrate with sufficient data that the expenses were reasonable. The Department will determine the appropriate cost recovery mechanism at that time.

#### IV. COMPLIANCE FILINGS

All non-BOC LECs shall file dialing parity implementation plans with accompanying tariffs in conformance with the directives of this Order within two weeks of the date of this Order, to be effective 14 days later. Assuming compliance, the Department intends to waive the 30-day statutory tariff review period to allow those tariffs to take effect expeditiously.

The Department will allow interested parties to file comments, if any, on the proposed ILP implementation plans and tariffs within five days of their submission to the Department. If no suspension or further investigation is needed, the Department will allow the tariffs to take effect on their effective dates.<sup>(13)</sup>

#### V. ORDER

Accordingly, after due notice, hearing, and investigation, it is

ORDERED: That non-Bell Operating Company local exchange carriers operating within Massachusetts will comply with all directives contained herein.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Section 251(b)(3) of the Act requires all local exchange carriers to provide dialing parity to competing providers of telephone toll service. 47 U.S.C. § 251(b)(3).

2. These ILECs are: Taconic Telephone Corp. ("Taconic"), Richmond Telephone Company ("Richmond"), Granby Telephone ("Granby"), and Sentinel Tree Telephone Company ("Sentinel"). The Department has previously approved an intraLATA dialing parity plan for New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic"), which was implemented April 20, 1999. See NYNEX ILP, D.P.U. 96-106 (1997) and Bell Atlantic-Massachusetts, D.P.U./D.T.E. 96-106-A (April 9, 1998).

3. Subsequent to filing its Petition for Leave to Intervene, MCI Telecommunications Corporation merged with WorldCom Technologies, Inc, another intervenor in this proceeding. While the resulting carrier now operates in Massachusetts as MCI WorldCom, Inc., for purposes of this proceeding, the Department will refer to them as separate entities.
4. Unless otherwise noted, for purposes of this Order, the term "non-BOC LECs" shall refer to non-Bell Atlantic ILECs, CLECs and resellers. Similarly, the term "LECs" shall be understood to include Bell Atlantic unless otherwise noted.
5. The acronym "PIC" is generally understood to mean a primary or preferred interexchange carrier. See Second Report and Order at ¶ 5, n.15.
6. The full 2-PIC method generally allows customers to presubscribe to a telecommunications carrier for all interLATA toll calls and to presubscribe to another carrier (including, but not limited to, the customer's ILEC) for all intraLATA toll calls. See Second Report and Order at ¶ 22.
7. WorldCom and RCN submitted joint initial and reply comments in this proceeding.
8. The Department's Order in IntraLATA Competition, D.P.U. 1731 (1985), established the dominant/nondominant regulatory framework.
9. The multi- or smart-PIC method would allow customers to presubscribe to multiple carriers, each one of which would be selected to transport a specified component of toll traffic. See Second Report and Order at ¶ 47.
10. Examples of OCPs offered by Bell Atlantic for residential customers include its "Call Around 413" and "Bay State East Services." For business customers, Bell Atlantic offers its "Business Link Plan" and the "Firm Rate Plan." See NYNEX ILP, D.P.U. 96-106 at 16-17.
11. In addition, ILP plans must include the statement that carriers participating in the non-BOC LECs' ILP offering must have an approved toll tariff on file with the Department.
12. A PIC freeze protects customers from an unauthorized change of the customer's carriers.
13. We recognize that this implementation schedule will not strictly conform to the deadlines in the FCC's Dialing Parity Order. However, we find that this slight delay is outweighed by the need for uniform minimum state standards for ILP. In addition, the Department has been advised by the FCC's Common Carrier Bureau that the FCC supports this approach.